



INTERIOR BOARD OF INDIAN APPEALS

Joy Sundberg v. Acting Sacramento Area Director, Bureau of Indian Affairs

18 IBIA 207 (03/27/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JOY SUNDBERG

v.

ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-79-A

Decided March 27, 1990

Appeal from a decision of the Acting Sacramento Area Director finding that a meeting of the Cher-Ae Heights Indian Community of the Trinidad Rancheria was invalid.

Appeal dismissed in part; decision affirmed.

1. Indians: Tribal Government: Generally

The Bureau of Indian Affairs properly declines to recognize actions taken at a tribal meeting at which a quorum is not present.

APPEARANCES: Joy Sundberg, pro se; Penny Coleman, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee; Howard L. Dickstein, Esq., Sacramento, California, for the Cher-Ae Heights Indian Community of the Trinidad Rancheria.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Joy Sundberg challenges a June 14, 1989, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that a January 26, 1989, meeting of the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Tribe) was invalid. For the reasons discussed below, the Board dismisses this appeal in part and affirms the Area Director's decision.

Background

The Tribe is organized under Articles of Association adopted on April 8, 1961, approved by the Acting Commissioner of Indian Affairs on June 6, 1961, and amended on January 22, 1988. ^{1/} Article 4 provides that the governing body of the Tribe is the Community Council, consisting of all members 18 years of age or over, and further provides for a five-member Business Committee "[t]o implement [the Community Council's] governing powers."

^{1/} The amendments were apparently approved by BIA on Apr. 18, 1988, although no record of the approval appears in the administrative record.

At a meeting held on December 17, 1988, the Community Council adopted a membership ordinance under Article 3.D of the Articles of Association. 2/ At the same meeting, the Community Council authorized the Business Committee to establish and implement a "verification of membership" procedure for the purpose of compiling a list of members eligible to vote in an election required by section 11(b) of the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-10(b) (1988). 3/ On January 3, 1989, the tribal Vice Chairperson submitted to the Superintendent, Northern California Agency, BIA, a list of 38 eligible voters of the Tribe, prepared under this procedure. 4/

By petition dated January 15, 1989, 27 individuals identifying themselves as members of the Tribe called a special meeting of the Community Council to be held on January 26, 1989. 5/ Thirty individuals signed the registration sheet at the meeting. The group attending the meeting voted to adopt an ordinance rescinding the December 17, 1988, membership ordinance. The group also adopted six resolutions: (1) a resolution appointing a Tribal Rights Ad-Hoc Committee to attempt to resolve the "illegal disenfranchisement of voters"; (2) a resolution affirming a tribal land assignment to William Crutchfield, Sr.; (3) a resolution restoring voting rights to individuals whose membership was not verified by the Business Committee;

2/ The ordinance was approved by the Area Director on Jan. 24, 1989.

3/ 25 U.S.C. § 1300i-10(b) provides:

"If a majority of the adult members of any of the following Rancherias at Resighini, Trinidad, or Big Lagoon, vote to merge with the Yurok Tribe in an election which shall be conducted by the Secretary within ninety days after October 31, 1988, the tribes and reservations of those rancherias so voting shall be extinguished and the lands and members of such reservations shall be part of the Yurok Reservation with the unallotted trust land therein held in trust by the United States for the Yurok Tribe."

4/ The Business Committee denied 18 applications for membership. These 18 individuals were permitted to cast "conditional ballots" in the merger election, because appeal procedures concerning the membership determinations were not completed in time for the election. BIA stated that, for purposes of the merger election only, it would review final membership determinations made by the Tribe.

The merger election was conducted by mail. Ballots from the 38 confirmed members were due on or before Jan. 27, 1989. The deadline for conditional ballots was extended until Feb. 13, 1989. The record does not reflect the outcome of the election.

5/ Article 8 of the Articles of Association provides:

"The Community Council shall hold regular meetings in January, April, July, and October on dates designated by the Business Committee. A special meeting of the Community Council may be called by the Business Committee or by a petition signed by at least thirty percent (30%) of the eligible voters. No business shall be conducted in a Community Council meeting unless at least fifty-one percent (51%) of the members are present. All official Community Council meetings shall be publicly advertised for at least ten (10) days in advance."

(4) a resolution terminating the employment of the tribal attorney; (5) a resolution requesting BIA to assist in a tribal election to recall the Business Committee; and (6) a resolution extending the deadline for submission of membership applications by 14 days from January 26. Twenty-nine individuals signed a petition seeking recall of the Business Committee.

Appellant, signing herself as Chairman, Trinidad Rancheria Tribal Rights Ad-Hoc Committee, submitted the resolutions to the Superintendent by letter of January 27, 1989, requesting that they be accepted. The Superintendent responded on February 6, 1989, stating in part:

Reviewing the attendance at [the January 26, 1989] meeting, only eight (8) of the twenty eight (28) [6/] individuals present were approved voters of the rancheria. Based upon the fact that thirty percent of the eligible voters were not present at the meeting, nor did thirty (30) percent of the valid voters sign the recall petition, we cannot validate the recall petition, the meeting or the resolutions passed at that gathering.

* * * * *

On December 17, 1988, the Trinidad Rancheria Community Council adopted Membership Ordinance No. 1. This ordinance provides criteria and procedures for developing a valid membership roll. Utilizing this ordinance, the rancheria on January 3, 1989, provided this office with a list of thirty eight (38) names. These names constituted the eligible voters for the purpose of the Rancheria Merger Election. We also assume that this same list comprised the valid voters of the rancheria. In order to conduct a valid special Community Council meeting or provide a recall petition, thirty percent (30%) or thirteen (13) of the thirty eight (38) eligible voters would have to participate.

Appellant appealed this letter to the Area Director, who affirmed it on June 14, 1989, on the basis that the petition for the meeting did not contain signatures of 30 percent of the eligible voters of the Tribe as shown on the January 3, 1989, list.

Appellant appealed this decision to the Board. Her notice of appeal was received on July 24, 1989. Appellant, the Area Director, and the Tribe filed briefs.

Discussion and Conclusions

In both her appeal to the Area Director and her appeal to the Board, appellant attempts to raise issues that she did not raise in her initial

6/ As noted above, there are 30 signatures on the registration sheet. Appellant's letter submitting the resolutions states that there were 29 adult members in attendance.

request to the Superintendent and which the Superintendent did not address in his February 6, 1989, decision. In her appeal to the Area Director, appellant challenged the tribal membership ordinance, arguing that it was not validly enacted and that it was substantively deficient as well. She also argued that the Superintendent was required by the Hoopa-Yurok Settlement Act to conduct a Secretarial election under 25 CFR Part 81 on the question of merger with the Yurok Tribe. The Area Director declined to address these two issues because the Superintendent had not addressed them in his decision.

In her appeal to the Board, appellant urges the Board to address the following issues:

- A. Whether the BIA correctly determined the eligible voters/members of the Tribe for purposes of determining the validity of actions taken at the January 26, 1989 Community Council meeting?
- B. Whether BIA correctly determined the eligible voters in the Merger Election?
- C. Whether the BIA violated the Hoopa-Yurok Settlement Act by failing to conduct a Secretarial Election for the vote on merger with the Yurok Tribe?
- D. Whether the BIA improperly approved an attorney contract with Howard Dickstein by accepting Resolution No. 826/088 rather than Resolution 4-89?

(Appellant's Opening Brief at 6). Of these issues, only the first relates to the Area Director's June 14, 1989, decision. It is therefore the only one of appellant's four stated issues which is properly before the Board in this appeal. Accordingly, appellant's appeal is dismissed as to all issues except her issue A.

Citing Frease v. Sacramento Area Director, 17 IBIA 250, 256 (1989), the Tribe argues, inter alia, that appellant lacks standing to bring this appeal because "[t]he Department has never recognized * * * any right of an individual member of a tribe to bring an action for the tribe based on a personal assessment of what is or is not in the tribe's best interest" (Tribe's Brief at 3). In this case, narrowed to its proper scope, appellant has an interest greater than that of an ordinary tribal member because the validity of her election as Chairman of the Tribal Rights Ad- Hoc Committee is directly dependent upon the validity of the January 26, 1989, meeting. The Board finds that appellant has standing to bring this appeal. 7/

7/ It is unlikely that appellant would be found to have standing to raise the issues which the Board has dismissed from this appeal.

The only issue remaining in this appeal is whether the Superintendent used the proper list of tribal voters in determining whether to recognize the results of the January 26, 1989, meeting.

The Superintendent used the list of 38 members sent to him on January 3, 1989. This was clearly the most recent voters' list. However, it was preliminary because the appeals of rejected applicants had not yet been considered by the Tribe. The next most recent voters' list was a list dated April 22, 1988, which had been prepared for a tribal election held that month. 8/ Arguably, the Superintendent should have delayed his decision until the Tribe completed a final current list following resolution of appeals. Evidently, however, the Superintendent determined this was not a realistic possibility in light of the press of events. 9/ Faced with an apparent need to make a prompt decision, the Superintendent had no choice but to use one of the two existing lists.

The Board has reviewed the registration sheet for the January 26 meeting and finds that, whether the January 3, 1989, voters' list or the April 22, 1988, voters' list is used as a base, there was no quorum present at the meeting. Thirty individuals signed the registration sheet. Ten of the 38 individuals on the January 3, 1989, voters' list were present. 10/ Nineteen of the 50 individuals on the April 22, 1988, voters' list were present. Accordingly, even if the Board were to find that the Superintendent should have used the April 22, 1988, list instead of the January 3, 1989, list, the result would be the same, *i.e.*, the meeting, and actions taken thereat, were invalid for lack of a quorum. 11/

8/ The Tribe contends that this list is endorsed by appellant. While appellant has not affirmatively endorsed the list in this appeal, she attached it to her brief before the Area Director, has not argued that it is invalid, and has failed to dispute the Tribe's contention that she endorses it. Under these circumstances, the Board considers appellant to have accepted the validity of the Apr. 22, 1988, list.

9/ The record shows that the Tribe was undergoing some turmoil, which was exacerbated by the merger election.

10/ The Superintendent counted 8 instead of 10. The Board is unfamiliar with the individuals concerned and so gives appellant the benefit of any doubt.

One signature on the registration sheet is illegible. There are two Lillian Quinns on the sheet. For purposes of this decision, the Board assumes that the illegible signature is that of a member appearing on the Jan. 3, 1989, list and the April 22, 1988, list, and that one of the Lillian Quinns is the same Lillian Quinn who appears on these lists.

11/ The Area Director's decision was based solely on the failure of the petition for the meeting to obtain signatures of 30 percent of the voters on the Jan. 3, 1989, list. If the Apr. 22, 1988, voters' list is used as a base, the required 30 percent was obtained. However, because of the lack of a quorum, the meeting was still invalid.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Sacramento Area Director's June 14, 1989, decision is affirmed. 12/

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

12/ The Board makes no determination concerning the validity of the petition seeking recall of the Business Committee. Under Article 6 of the Tribe's Articles of Association, this petition should have been presented to the Business Committee. The validity of this petition is a matter for the Tribe to decide.